HIGH COURT OF UTTARANCHAL NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 1295 of 2001

Krishan Lal
Vs
Commissioner, Garhwal Division Pauri

Approved for reporting
––––––––––––––––

~~Not approved for reporting~~

Dated of decision :04.04.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINTIAL

Writ Petition No. 1295 of 2001 (MS)
(Old No. 45996/99)

Krishna Lal Son of Sri Ram
Village Jonk, Patti Talla Udaipur,
District Pauri Garhwal ..... Petitioner

Versus

1. Commissioner, Garhwal Division, Pauri
2. District Magistrate/Collector, Pauri..... Respondents

Writ Petition No. 1296 of 2001 (MS)
(Old No. 45997/99)

Sri Bhagwan Prasad (Now deceased)
1/1 Smt. Savitri Devi w/o Bhagwan Prasad
½ Madal Lal s/o Bhagwan Prasad
1/3 Mudhusudan Sharma s/o Bhagwan
¼ Manoj Sharma s/o Bhagwan Prasad
1/5 Gopal Sharma s/o Bhagwan Prasad
All residents of
Village Jonk, Patti Talla Udaipur,
District Pauri Garhwal ..... Petitioner

Versus

3. Commissioner, Garhwal Division, Pauri
4. District Magistrate/Collector, Pauri..... Respondents

Sri K.N. Joshi, Advocate for the petitioner.
Standing counsel for the respondents.

Dated: 4.4.2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi counsel for the petitioners and Standing Counsel for the respondents.

Both the above writ petitions have been filed for a writ of certiorari quashing the judgment and orders dated 12.04.1999, 26.4.1999 passed by the District Magistrate, Pauri Garhwal and orders dated 24.7.1999 passed by the Commissioner, Garhwal Division. The facts involved and also the orders passed in the above writ petitions are common, therefore, both the writ petitions are being decided by a common order.

Briefly stated the petitioners were allotted land in village Jaunk, Patti Udaipur, Tehsil Kotdwar on lease under the Government Grant Act. The Collector, Pauri Garhwal has received a complaint regarding illegalities caused in allotment of lease Patta to the petitioners. He initiated inquiry in the year 1999. The Collector has observed that the S.D.O. has granted lease in violation of Collector's order dated 4.8.1992 and had not taken prior approval of Collector before executing the lease deed. He accordingly cancelled the lease vide order dated 26.4.99 and 12.4.1999. Against the order of the Collector, the petitioners filed appeals before the Commissioner, Garhwal Division, which were heard and dismissed.

The District Magistrate thereafter has cancelled the lease in favour of the petitioner.

Petitioners have submitted that they have been depositing the annual rent regularly.

Counsel for the petitioners has submitted that once the document of lease has been executed, legitimate expectation lies in favour of the petitioners and the District Magistrate and the Commissioner have no power to cancel the document before the expiry of thirty years from the date of execution of the deed. It was mentioned that the discretion lies with the State Government to renew or not to renew after the lapse of 30 years but the lease, which is continuing in favour of the petitioners, cannot be a matter of cancellation by the impugned order.

Counsel for the State was unable to show that the Sub-Divisional Magistrate has no power on behalf of the State to execute the lease and further admittedly till today no action has been taken by the Government to cancel the lease granted under the Government Grants Act.

The delegation of the power has been conferred by virtue of the Government order dated 9th October 1987. It reads as under:-

^^¼1½ jktLo ifj"kn }kjk fu/kZkfjr izi= esa Hkwfe xouZesaV xzkUVl ,aDV ds v/khu iVVs ij vkoafVr dh tk;sxh A ijxuk vf/kdkjh dks iVVk foys[k ij jkT;iky dh vksj ls gLRkk{kj djus ds fy;s vf/kd`r fd;k tkrk gSA ,sls foys[k ds iathdj.k dh t:jr ugha gSA

¼vi½ iVVs dh 'krsZ] tc rd fd fdlh fof'k"k ekeys vFkok ekeyksa dks fof'k"B Js.kh ds fy;s vU;Fkk O;oLFkk u dh xbZ gks] fuEuor gksxh%&
¼d½ iV~Vk lnk ds fy;s gksxkA
¼[k½ iV~Vsnkj dk vf/kdkj LFkkbZ rFkk oa'kkuqxr vf/kfu;e 1950 dh /kkjk 7 ;k 174 ykxw gksxhA

¼x½ iV~Vsnkj dks Hkwfe varfjr djus dk vf/kdkj ugha gksxk fdUrq Hkwfe dks tekur gsrq ljdkj vFkok foRrh; laLFkkvksa ls izkfIr dh n'kk esa Hkwfe dks fcuk dCtk fn;s gq;s ca/kd j[kus dk vf/kdkj gksxkA

¼?k½ Hkwfe dk mi;ksx dsoy d`f"k] ckxokuh] Ik'kqikyu] ftlesa eRL;aikyu rFkk dqVdqV ikyu Hkh 'kkfey gS] ds fy;s gh fd;k tk ldsxkA

¼M½ iV~Vsnkj }kjk ns; yxku mruh /kujkf'k gksxh tks mRrj izns'k tehnkjh fouk'k vkSj Hkwfe O;oLFkk vf/kfu;e] 1950 dh /kkjk 245 ds vUrZxr Hkwfe/kjks ds fy;s ekyxqtkjh vo/kkfjr djus ds fy;s fu;e] fl}krksa ds vk/kkj ij fu/kkZfjr dh tk;saA

¼p½ iV~Vsnkj dh fdlh 'krZ ds mYya/ku fd;s tkus dh n'kk esa ljdkj dks izfrdj fn;s lHkh Hkkjksa ls eqDr vkoafVr Hkwfe dk dCtk ysus dks vf/kdkj gksxk

Section 3 of the Government Grants Act provides as under:

> ***Government grants to take effect according to their tenor.-*** *All provisions, restrictions conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.*

In the case of Sahebzada Mohammad Kamgarh Shah Vs. Jagdish Chandra Deo Dhabal Deb and others. AIR 1960 SC 953, it has been held as under:

"The correctness of these principles is too well established by the authorities to justify any detailed discussion. The task being to ascertain the intention of the parties, the cases have laid down that that intention has to be gathered by the words used by the parties themselves. In doing so the parties must be presumed to have used the words in their strict grammatical sense. If and when the parties have first expressed themselves in any way and then go on saying something, which is irreconcilable with what has gone before, the Courts have evolved the principle of the theory that what once had been granted cannot next be taken away, that the clear disposition by an earlier clause will not allowed to be cut down by a later clause. Where there is ambiguity it is the duty of the Court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee.

There is the existing lease in favour of the petitioner. It has been executed between the State and the petitioner. The principle of promissory estopples applies to the facts of the case. Once the lease has been executed for a period of 30 years, the petitioners having made the investment, the doctrine of promissory estopples applies and the respondent cannot be permitted to get immunity from the document which has been executed in favour of the petitioner. The doctrine of promissory estoppels has been considered in the case of Purshottam Das Tandon and others Vs. State of U.P., Lucknow and others

reported in AIR 1987 Allahabad 56, wherein it has been held as under:

> *"To relieve victim of arbitrary abuse of discretion and pin down public authorities to act with honestly and good faith, the Courts have evolved doctrine of Promissory Estoppel. In M.P. Sugar Mills Vs. State of U.P. AIR 1979 SC 621, its horizon was broadened not only as a weapon of defence but as a cause of action enforceable in a Court of law***\

Article 14 by expanding its scope and extending its guarantee against arbitrariness. Equality was described as a 'dynamic concept which could not be 'cribbed, cabined and confined," within the traditional and doctrinaire limits. The Hon'ble Court observed that from a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies. One belonged to the rule of law in a republic while the other to the whim and caprice of an absolute Monarch. It was further widened in Ramanna's case (AIR 1979 SC 1628)(supra), when the Hon'ble Court held, 'that Article 14 strikes at arbitrariness because an action that is arbitrary must necessarily involve negation of equality……..

A welfare State is not only an ideal or a vision but a conviction and necessity. It is the rational basis of a modern State. Its policy implications flow from broad ideology of economic and social uplift. Whether it was political expediency or necessity which persuaded State Government to assure settlement of such tenements with those residing in it need not be commented upon or gone into but it cannot be disputed that removal of poverty by providing houses to weaker section of the society is a step towards realization of Welfare State."

A perused of the order passed by the Commissioner as well as by the District Magistrate shows that the petitioners have neither violated the terms of the lease nor acted in violation of the covenant of the lease, and as such there is no occasion to cancel the lease. Even assuming that there was any

defect in the grant of the lease it was for the State to rectify the defect, if any, instead of penalizing the petitioner.

The counsel for the respondents has referred the judgment of this Court dated 19.9.2005 in Writ Petition No. 692 of 2002 (MS), Kailasha Nand Mission Trust vs. state of Uttaranchal & others. The order is distinguishable in as much as in that case the notification as referred above has been treated for the purposes of agricultural lease.

In the aforesaid judgment the matter has been left open for the State Government, therefore, the Collector shall examine the facts in the light of the notification issued by the State Government and shall rectify the detect, if any.

It is well settled that “one who seeks equity must come with clean hands.” A valid lease having been granted, in favour of the petitioners the State Government or the Collector must come forward to rectify the same.

In view of above, a writ of certiorari is issued quashing the orders dated 12.4.1999 & 26.4.1999 passed by the District Magistrate, Pauri Garhwal and orders dated 24/7/1999 passed by the Commissioner, Garhwal Division, Pauri. The matters are remanded to the Collector, Pauri Garhwal for passing fresh orders in the light of the observations made above, after hearing the parties. The Collector shall also take into account the Government order dated 7th October 1987. Parties are directed to maintain status quo.

Writ petitions are allowed. No order as to costs.

Dated: 4.4.2006

*Dhyani **(Rajesh Tandon, J.)**